

**IN THE COURT OF THE CIVIL JUDGE JUNIOR DIVISION, AT
PERNEM
(Before Ms. Shilpa S. Pandit, Civil Judge Junior Division at Pernem)**

Civil Review Appl. No.1/2018

In the matter of inheritance left behind by the
deceased Mrs. Julie Prakash Keni alias Julia alias
Julie Maria Bostion D'Souza e Keni r/o Arambol,
Pernem, Goa. ... Deceased

V e r s u s

1.Mrs. Maria Cunha alias Marie Kenny,
wife of Mr. Mathew Cunha,
daughter of late Prakash Keni,
Age 41 years, married, housewife,
R/o H.No. 413, Deulwada, Dhargal,
Pernem, Goa.

... Applicant

1.Mr. Mathew Cunha,
son of David Cunha,
Age 46 years, married, service,
Both Indian National, r/o H.No. 413,
Deulwada, Dhargal, Pernem, Goa.

2. Mr. Joseph Prakash Keni,
son of late Prakash Keni,
major of age, married,

3. Mrs. Bostian Keni,
wife of Joseph Keni,
major of age, married,
Both Indian National, r/o Santanwada,
Bhatwadi, Arambol,
Pernem, Goa.

... Interested Parties.

Learned Advocate Ms. A. Shahapurkar present for the
applicant/Head of the family at the time of arguments and order.

Learned Advocate Ms. Morajkar present for the interested parties at
the time of arguments and order.

ORDER

**(Delivered on this 1st day of the month of September of the year
2018)**

This order is passed on the application for review of the
order dated 14.02.2018 u/s 448(B)(3) filed by the applicant at exhibit
1.

2. The said application is objected on behalf of the interested
parties by reply at exbt 5. Ld. Adv. Ms. A. Shahapurkar filed her
written arguments at exbt 6. She relied on the following citations:- **1)**
Nandan Durai V/s Francis Rattisbonne (1992 AIR Madras 10), **2)**
Subramanian Swamy & anr. V/s S.C. Gudimani (1991 (44) DLT
331) and 3) Kamrudin J. Mavany V/s Tajdin J. Mavany (Civil
Appl. (Review) No. 12 of 2002 in appeal from order no. 90/1992
dt. 01.09.2014). Ld. Adv. Ms. R. Morajkar for the interested party
nos. 2 and 3 filed her written arguments at exbt 7. I have duly
perused the records and considered the same.

3. It is the contention of the Ld. Adv. Ms. A. Shahapurkar that the auction of the property was held. However, the interested party did not remain present inspite of being served. The applicant had taken asset in auction for Rs. 15,00,100/-. However, he could not pay owelty money and hence after giving several opportunities the auction was discarded by the Court and accordingly matter was fixed for fresh auction for which notices were again issued to the interested parties. The said interested parties appeared and they filed reply to the corrected list of assets and final list of assets which was allowed by this Court. An application fore re-auction was filed when the matter was fixed for reply to the re-auction application. When the said application was under consideration, this Court directed head of the family to place on record form I and XIV of the said property and accordingly form I and XIV was placed on record. The name of Julia alias Julie Maria Bostion D'Souza e Keni was recorded with respect to the 900 sq.mts in the occupant's column and other name was recorded of Filomena Cyril D'Souza. This court by my order dated 14.02.2018 while disposing the application for auction filed by the head of the family in Inventory Proceeding 9/14 at exbt 29 closed the inventory proceeding on the ground that there was nothing produced on record even to suggest that Julia alias Julie Maria Bostion D'Souza e Keni was also known as Mrs. Julie Prakash Keni. Hence, the present application is filed by the head of the family along with documents on the ground that they were not given an opportunity to place the documents. They subsequently came across deed of gift dated 08.03.2018 executed by the parents of said Julie Prakash Keni in her favour. Hence, prayed that the order dated 14.02.2018 to be reviewed and accordingly parties to be heard on the application for re-auction.

4. She has placed on record the copy of deed of gift dated 25.09.1985 in which 900 sq.mts of the property bearing survey no. 283/11 was gifted to Julie D'Souza @ Maria Bostion D'Souza wife of

Prakash Keni as the only property listed in the said inventory proceeding no. 9/2014 was ad-measuring 900 sq.mts of the property bearing survey no. 283/11. Thus, now the applicant has produced on record the deed of gift showing the fact that the said property belonged to the estate of the deceased. She has also relied on the certificate issued by the Sarpanch of the Village Panchayat, Arambol dated 08.03.2018 stating that said Mrs. Julie Prakash Keni was also known as Julia alias Julie Maria Bostion D'Souza e Keni. Even otherwise, it is also stated in the deed of gift itself. Thus, the applicant has produced the documents to show that the deceased estate enlisted in the said inventory belonged to the deceased.

5. As far as the review application is concerned, she has placed reliance on section 448 (3) of the Goa Succession Special Notary and Inventory Proceeding Act 2012 which provides for an application for review on the ground stated therein. One of which is when new document is produced which was not in possession or power of the party.

6. She has also relied upon the judgment passed in the case of **Nandan Durai (supra)** where the Hon'ble High Court of Madras has held that additional evidence can be produced along with review application. She has also relied on the judgment of the Hon'ble High Court of Delhi passed in the case of **Subramanian Swamy (supra)** where the Hon'ble High Court of Delhi while dealing with the application for review has held that all the documents relevant can be produced before commencement of evidence. The said decision strictly does not fall within the facts and circumstances of this case. She has also relied on the judgment passed by our Hon'ble High Court in the case of **Kamrudin J. Mavany (supra)** where the Hon'ble High Court allowed the review application in the inventory proceeding. Thus, it is her contention that the review application is maintainable in the inventory proceeding.

7. Per contra, it is the contention of the Interested parties that the proceeding instituted by applicant is an abuse of process of law. The proceedings were initiated without producing death certificate of the deceased on record. The auction was not held after following the provisions of law. Hence, this Court rightly dismissed the proceedings. There is no case made out for the grant of application and hence prayed for its dismissal.

8. Ld. Ad.v Ms. A. Shahapurkar has rightly pointed out that order passed by this Court dismissing proceedings has to be reviewed in view of the new document produced by them on record i.e. deed of gift of the deceased with respect to the said property dated 05.09.1985 executed in favour of the deceased.

9. In the result, the application for review of the order dated 14.02.2018 u/s 448(B)(3) filed by the applicant at exhibit 1 stands granted. The order dated 14.02.2018 accordingly stands reviewed. The inventory proceeding bearing no. 9/2014 is ordered to be restored. Parties therein are given opportunity to take further steps.

Proceedings stands closed.

Pronounced in the Open Court.

(Shilpa S. Pandit)

Civil Judge Junior Division,
Pernem Goa.

*SJ